Supreme Court, U.S.
FILED

No. 01 667 OCT 22 2001

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IN THE

Supreme Court of the United States

OCTOBER TERM, 2001

EDMOND N. GAUDELLI,
Petitioner,
v.
MILTON EISNER, WILLIAM CROWLEY, JAMES Y. GARRETT, LINDA L. KELLY, D. BROOKS SMITH, KEITH ALAN M. PESTO, EDWARD R. BECKER, SAMUEL A. ALITO, JR., THOMAS L. AMBRO, MARYANNE TRUMP BARRY, MORTON I. GREENBERG, CAROL LOS MANSMANN, THEODORE A. MCKEE, RICHARD LOWELL NYGAARD, MARJORIE O. RENDELL, JANE R. ROTH, ANTHONY J. SCIRICA, DOLORES K. SLOVITER, RUGGERO J. ALDISERT, ROBERT E. COWEN, LEONARD I. GARTH, MAX ROSENN, WALTER K. STAPLETON, JOSEPH F. WEIS, JR., MARCIA WALDRON, and several unknown law clerks and staff attorneys,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

EDMOND N. GAUDELLI, *Pro se*
2447 HAYSON AVENUE
PITTSBURGH, PA 15220

55 pp

QUESTIONS PRESENTED

The following questions are presented by the Petitioner:

I. May law clerks engage in the judicial function unknown to the litigant?

II. Do pro se litigants have the same right of meaningful access to the courts as do lawyers from "blue chip" law firms?

III. Is there in fact a remedy for every right denied?

PARTIES BELOW

Petitioner Edmond N. Gaudelli was the plaintiff-appellant in the court below. Respondents Milton Eisner, William Crowley, James Y. Garrett, Linda L. Kelly, D. Brooks Smith, Keith Alan M. Pesto, Edward R. Becker, Samuel A. Alito, Jr., Thomas L. Ambro, Maryanne Trump Barry, Morton I. Greenberg, Carol Los Mansmann, Theodore A. Mckee, Richard Lowell Nygaard, Marjorie O. Rendell, Jane R. Roth, Anthony J. Scirica, Dolores K. Sloviter, Ruggero J. Aldisert, Robert E. Cowen, Leonard I. Garth, Max Rosenn, Walter K. Stapleton, Joseph F. Weis, Jr., Marcia Waldron, and several unknown law clerks and staff attorneys, were the defendants-appellees in the court below.

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Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Edmond N. Gaudelli, on behalf of himself, hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit, filed on July 26, 2001. There was no good-faith determination of the law in petitioner's case in either the district court or the Third Circuit Court of Appeals.

OPINIONS BELOW

The Court of Appeals' Judgment affirming the district court is reproduced at la-2a of the Appendix to this certiorari petition (hereafter "Pet. App."). The unreported District Court Order of March 30, 2001 is reproduced at Pet. App. 3a-7a.

JURISDICTIONAL STATEMENT

The Court of Appeals' final judgment was entered on July 26, 2001. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the right to petition clause of the First Amendment, U.S. Constitution, the due process clause of the Fifth Amendment, U.S. Constitution, and 42 U.S.C. § 1985(2).

The First Amendment, United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment, United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or

> indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

42 U.S.C. § 1985(2):

> If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

STATEMENT OF THE CASE

Petitioner was convicted on the basis of a forged signature purported to be his and introduced as evidence against him in a criminal trial in which he was convicted.

Petitioner made repeated attempts to have his conviction set aside and his rights vindicated in the federal courts of the Third Circuit.

Petitioner filed his complaint on March 3, 2000. See Pet. App. 8a-37a.

Petitioner's Complaint clearly explains his grievances and the rulings of the Honorable Robert J. Cindrich just as clearly illustrate the principle that the federal courts in the Third Circuit "do not have time for the affairs of peasants." Plucknett, *Concise History of the Common Law*, p. 310 (1956).

That pro se litigants are "treated differently" in the Third Circuit is a matter of fact not subject to debate.

> ***STAFF ATTORNEYS OFFICE*** The Staff Attorneys supervise *pro se* litigation while working closely with the Clerk's Office and the Court. The Staff Attorneys DO NOT represent you or act as your attorney. They may assist you with procedural questions, however, they can *not* discuss the merits of your case with you, nor give you substantive legal advice. If you have a question about court procedures, you may call the Staff Attorneys Office during business hours. **IF YOU WISH TO SPEAK WITH A STAFF ATTORNEY IN PERSON, YOU MUST CALL AND MAKE AN APPOINTMENT.**
>
> Information for *Pro Se* Litigants (3rd Cir. 1/27/00).

Just as obvious is the fact that the Third Circuit Court of Appeals is less than honest with pro se litigants

> *How is my case decided?* Once all briefs have been filed (appellant's and appellee's), your case will be placed in a ready pool. Cases that were ready before yours will be sent by the Clerk to the Court first.
>
> The judges will very carefully analyze the lower court records, briefs, and appendices in your case. Oral argument is not a right. The judges will ask for oral

> argument only when they think it will be useful in deciding a case.[1] 3rd Cir. LAR 34.1. If the Court orders oral argument, you will be notified by the clerk ten (10) days in advance. Otherwise, the case is considered only on the record, briefs, and appendix. Three judges will decide your case, applying the appropriate legal standards. **Note:** it is inappropriate to contact the judges directly. Direct all correspondence either to the Clerk's Office or to the Staff Attorney's Office.
>
> *Id.*

Petitioner filed his Notice of Appeal on April 13, 2001.

Petitioner filed his appeal brief on May 30, 2001.

The respondents filed only a motion for summary affirmance on April 23, 2001 and did not file a reply brief.

The Judgment affirming the district court was entered July 26, 2001, see Pet. App 1a-2a.

REASONS FOR GRANTING THE WRIT

The treatment of the rights of American citizens as "the affairs of peasants" has not gone unnoticed, even in former times.

> The aggrieved party read and reread the briefs as well as the transcripts. His mind is fed on nothing else during the three months waiting for the action of the court. He knows every point raised. He can repeat every argument advanced. All his savings through a lifetime are tied up in the case. He knows he is right. Then comes the decision. It deals with none of the points argued. It shows on its face the court refused to read the brief. He had been tossed aside like a white chip. He knows, and his friends know, he has been

---

[1] Oral argument in the Third Circuit quite often reveals that the deciding panel hasn't *read* anything concerning the case in front of them (let alone the briefs).

> denied his day in court.
>
> To that man, to his family and to his friends, organized society is organized iniquity.
>
> Underneath the social unrest of the world today, as its main underlying cause, is the feeling in the breasts of the masses that justice is not for them. They do not know the cause, nor can they suggest the remedy,—and so they only want to destroy. Society to them has come to mean organized injustice.
>
> John Rustgard, *Dry Bones on the Bench—The Remedy for the Evil,* 88 Central Law Journal 341, 344 (May 9, 1919) (John Rustgard was the U.S. District Attorney, 1st division of Alaska, 1910-1914, and the Attorney General of the Territory of Alaska, 1921-1933).

Petitioner is not a "white chip" nor should he be treated s a mere annoyance to federal judges who are, after all, "public servants."

I. LAW CLERKS MAY NOT ENGAGE IN USURPING THE DUTIES OF ARTICLE III JUDGES WHO HAVE BEEN CONFIRMED BY CONGRESS TO PERFORM THOSE DUTIES.

> What would be the measure of a right whose transgression carried no penalty? It would look more like a hope, or a request, than a guarantee.
>
> Bandes, *Reinventing Bivens: The Self-Executing Constitution*, 68 So. Cal. L. Rev. 289, 306 (Jan. 1995).

Plaintiff was convicted by government use of a forged document. No court has addressed that issue and no government attorney has denied it.

Neither does anyone deny that law clerks and staff attorneys are handling pro se cases.

The Fourth Circuit is at least honest enough to *admit* this fact in prisoner cases:

> [T]he great number of prisoner petitions has forced federal courts to resort to adjudicative systems in which decisions are handed down with only the tangential involvement of Article III Judges. The use of **staff counsel** and **other** alternative modes of **judicial decisionmaking** has been increased for the specific purpose of handling these claims. [Robert G.] Doumar, ["Prisoner Cases: Feeding the Monster in the Judicial Closet," 14 St. Louis U. Pub. L. Rev. 21, 27-29 (1994)] . . . Whenever claims are disposed of without the closest attention of the Judges, the legitimacy of the federal courts is at risk. Furthermore, where Article III Judges are directly involved, the predominance of these cases threatens to convert the job of judging, particularly at the trial level, into a subspecialty of prison litigation. This will diminish the attractiveness of the federal bench for many candidates.
>
> *Nasim v. Warden, Maryland House of Correction*, 64 F.3d 951, 958 (4th Cir. 1995).

This Court has one of two choices.

First, this Court can do what all the *other* federal judges named as defendants in this action have done so far: simply ignore petitioner's grievances.

Second, this Court can act *impartially* and apply the proper legal standards to address petitioner's grievances, consistent with its oath of office, 28 U.S.C. § 453.

Petitioner adopts and incorporates by reference herein the arguments in his original complaint, Pet. App. 13a-36a.

II. PRO SE LITIGANTS SHOULD HAVE THE SAME RIGHT OF MEANINGFUL ACCESS TO THE COURTS AS DO LAWYERS FROM "BLUE CHIP" LAW FIRMS.

The published opinions of this Court and the courts below make reassuring reading.

THE CONSTITUTION

"[C]onstitutional rights would be of little value if they could be . . . indirectly denied." The Constitution "nullifies sophisticated as well as simple-minded modes" of infringing on Constitutional protections. *U.S. Term Limits, Inc. v. Thornton*, 115 S.Ct. 1842, 1867 (1995).

There is a strong presumption that Constitutional claims . . . are judicially reviewable in some forum. *Riggin v. Office of Senate Fair Employment Practices*, 61 F.3d 1563, 1570 (Fed. Cir. 1995) (citation omitted).

Law is not sophistry; constitutional mandates cannot be avoided and individual rights violated by exalting form over substance. *Knox v. Lanham*, 895 F.Supp. 750, 756 (D. Md. 1995).

THE LAW

Institutions without respect—laws violated with impunity are to a Republic the symptoms and seeds of death. *Charge to the Grand Jury* by Chief Justice Oliver Ellsworth (Circ. Ct. D. Ga. April 25, 1796). Reprinted by numerous newspapers of that era. *Doc. Hist. of U.S. Supreme Court 1789-1800*, p. 119.

The purpose of the law is to provide a remedy for those injured by unlawful conduct. Herout, *When Fundamental Rights Collide: Guinn v. Collinsville Church of Christ*, 21 Tulsa L.J. 157, 171 (1985).

At this point this would be a new experience for this petitioner.

THE JUDGES

Judges . . . are presumed to know the law and to apply it in making their decisions. *United States v. Otto*, 176 F.3d 416, 418 (8th Cir. 1999) (citation omitted).

A civil case in which a judge has the opportunity to make law favorable to his own case results in an unconstitutional judgment. *Boddy v. Guerrero*, 179 F.3d 714, 717 (9th Cir. 1999) (citation omitted).

Judges themselves must not be lawless; they must follow the substantive law they are intended to administer. Hoeflich, *Regulation of Judicial Misconduct*, 2 Law and History Review 79, 80 (1984).

[I]f the goal of expediency is given higher priority than the pursuit of Justice, then the bench and the bar both will have failed in their duty to uphold the Constitution and the underlying principles upon which our profession is founded. *Sims v. ANR Freight System, Inc.*, 77 F.3d 846, 849 (5th Cir. 1996).

The judge who knows other judges have erred, but agrees because he does not want to shame them will end in *Gehenna*. *Leo Rosten's Treasury of Jewish Quotations*, page 316 (1972).

Tyranny cannot come to America except by a failure of the judiciary to consistently be intellectually honest . . . Kilgore, *Judicial Tyranny*, p. 14 (1977).

III. THERE IS IN FACT NO REMEDY FOR EVERY RIGHT DENIED.

A recent dissenting opinion of this Court elucidates this petitioner's contentions much more succinctly than the petitioner could:

> So there is much irony in the Court's profession that it grounds its opinion on a deeply rooted historical tradition of sovereign immunity, when the Court abandons a principle nearly as inveterate, and much closer to the hearts of the Framers: that where there is a right, there must be a remedy. Lord Chief Justice Holt could state this as an unquestioned proposition already in 1702, as he did in *Ashby v. White*, 6 Mod. 45, 53-54, 87 Eng. Rep. 808, 815 (K.B.):
>
> > "If an Act of Parliament be made for the benefit of any person, and he is hindered by another of that benefit, by necessary consequence of law he shall

> have an action; and the current of all the books is so." *Ibid.* (citation omitted).

Blackstone considered it "a general and indisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded." 3 Blackstone *23. The generation of the Framers thought the principle so crucial that several States put it into their constitutions. And when Chief Justice Marshall asked about Marbury, "If he has a right, and that right has been violated, do the laws of his country afford him a remedy?," *Marbury v. Madison*, 1 Cranch 137, 162 (1803), the question was rhetorical, and the answer clear:

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court." *Id.*, at 163.
>
> *Alden v. Maine*, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999) (J. Souter, dissent).

As did Congress in former times:

> Mr. McKEOWN. . . . What is free government? In its last analysis it is the intelligent and impartial administration of justice. It is public justice that holds the Union together. It is to the courts that we look for the protection of our lives, liberty, reputation, and rights of property. The people have a greater concern in the judicial branch of the Government than in any other. It is to the courts that the people look to protect them in their rights against the Nation or the world. The courts deal with the people in every relation of life from the day they enter the world, and direct the affairs of their

> estates and guide their hands after death in the distribution of their property. . . .
>
> *Congressional Record*, June 3, 1930, vol. 72, p. 9988.

By either yardstick, we no longer have free government in the United States.

CONCLUSION

For the reason set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

EDMOND N. GAUDELLI, *Pro se*
2447 HAYSON AVENUE
PITTSBURGH, PA 15220
Pro se petitioner

Dated: October _____ , 2001

APPENDIX

APPENDIX A

No. 01-1926

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

EDMOND N. GAUDELLI,
Appellant

v.

MILTON EISNER; WILLIAM CROWLEY; JAMES Y. GARRETT; LINDA L. KELLY; D. BROOKS SMITH; KEITH ALAN M. PESTO; EDWARD R. BECKER; SAMUEL A. ALITO, JR.; THOMAS L. AMBRO; MARYANNE TRUMP BARRY; MORTON I. GREENBERG; CAROL LOS MANSMANN; THEODORE A. MCKEE; RICHARD LOWELL NYGAARD; MARJORIE O. RENDELL; JANE R. ROTH; ANTHONY J. SCIRICA; DOLORES K. SLOVITER; RUGGERO J. ALDISERT; ROBERT E. COWEN; LEONARD I. GARTH; MAX ROSENN; WALTER K. STAPLETON; JOSEPH F. WEIS, JR.; MARCIA WALDRON, and several unknown law clerks and staff attorneys,

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On Appeal From the United States District Court
For the Western District of Pennsylvania
(W.D.Pa. Civ. No. 00-00437)
District Judge: Honorable Robert J. Cindrich

Submitted For Possible Summary Action
Under Third Circuit LAR 27.4 and I.O.P. 10.6
July 23, 2001

Filed July 26, 2001

Before: FUENTES, *Circuit Judge*, and FULLAM and ACKERMAN, Senior District Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible summary action under Third Circuit LAR 27.4 and I.O.P. 10.6. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this court that the judgment of the District Court entered April 2, 2001 be and the same is affirmed. All of the above is in accordance with the opinion of this Court.

ATTEST:
/s/ Kathleen Brower
Chief Deputy Clerk

DATED: July 26, 2001

* Honorable John P. Fullam, Senior District Judge of the United States District Court for the Eastern District of Pennsylvania, and Honorable Harold A. Ackerman, Senior District Judge of the United States District Court for the District of New Jersey, sitting by designation.

APPENDIX B

Civil Action No. 00-0437

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDMOND N. GAUDELLI,
Plaintiff,

v.

MILTON EISNER, et. al.,
Defendants.

MEMORANDUM ORDER

Filed March 30, 2001

This action arises from pro se plaintiff Edmond N. Gaudelli's ("Gaudelli") March 1996 conviction in the United States District Court for the Western District of Pennsylvania for conspiracy to defraud the United States and for making false statements to a grand jury. Gaudelli filed the instant action, the last in a series of suits, alleging that he is the victim of an obstruction of justice conspiracy involving (1) individual defendant Milton Eisner, his former accountant who testified for the government in the prior criminal proceeding; and (2) federal defendants William Crowley, an FBI agent involved in his criminal prosecution; James Y. Garrett, the assistant United States Attorney who prosecuted him; Linda L. Kelley, also an assistant United States Attorney; D. Brooks Smith, United States District Judge for the Western District of Pennsylvania; Keith A. Pesto, United States Magistrate Judge for the Western District of

Pennsylvania; all judges, newly appointed, current and senior, of the United States Court of Appeals for the Third Circuit (the "Third Circuit"); Marcia Waldron, a Third Circuit senior staff attorney; and several unknown law clerks and staff attorneys (collectively referred to as the "Federal Defendants"). Although Gaudelli has not clearly framed his causes of action, it appears that he is pursuing two claims -- (i) a claim he labeled "fraud upon the court"; and (ii) a claim under the Racketeer Influence and Corrupt Organization ("RICO") statute, 18 U.S.C. Section 1962.

Pending before the court is Eisner's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 4) and the Federal Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6) (Doc. No. 13).

In deciding a Rule 12(b)(6) motion, we accept all well pleaded facts as true and draw all inferences in favor of the non-moving party. We focus on the pleadings in addressing the motion, but may also consider other items appearing in the record of the case. *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1384-85 and n.2 (3d Cir. 1994). A claim should not be dismissed unless it appears beyond doubt that the non-moving party can prove no set of facts in support of its allegations which would entitle it to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

A motion under Rule 12(b)(1) requires us to look at the legal sufficiency of the claim. *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1408-09 (3d Cir. 1991). Dismissal is proper only when the claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or . . . is wholly insubstantial and frivolous." *Bell v. Hood*, 327 U.S. 678, 682 (1946). A Rule 12(b)(1) differs from a Rule 12(b)(6) motion in two relevant respects. First, his or her jurisdictional assertions having been challenged, the burden falls on the plaintiff to prove jurisdiction. "The person asserting jurisdiction bears the burden of showing that the case is properly before the court at all stages of the litigation." *Packard v. Provident Nat' l Bank*, 994 F.2d 1039,

1045 (3d Cir. 1993). Second, the court may go outside the bounds of the complaint to examine other evidence to decide a Rule 12(b)(1) motion: *Berardi v. Swanson Memorial Lodge*, 920 F.2d 198, 200 (3d Cir. 1990). Under Rule 12(b)(1), no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of the jurisdictional claims. *Robinson v. Dalton*, 107 F.3d 1018, 1021 (3d Cir. 1997).

1) *Eisner's Motion To Dismiss*

Eisner argues that any claim the complaint purports to assert against him is barred by the doctrine of collateral estoppel. We agree.

Collateral estoppel, otherwise known as issue preclusion, bars relitigation of individual matters that were fully and necessarily determined in a prior judgment. *Gregory v. Chehi*, 843 F.2d 111, 115 (3d Cir. 1988). The gravamen of the instant suit is that a signature appearing on a document that was entered into evidence in his criminal trial was not his but a forgery, and that Eisner falsely testified as to the document's authenticity during the trial. The Third Circuit has already rejected this argument, which Gaudelli raised as part of his direct appeal. *See United States v. Gaudelli*, No. 96-3514 (3d Cir. Feb. 13, 1998) (unpublished memorandum opinion) at Federal Defs' Br. (Doc. No. 14) Ex. A p 5 ("Having found no error in the admission of Government Exhibit 702 on the basis of authenticity, we find Gaudelli's challenge to Eisner's testimony likewise unmeritorious.") Gaudelli also filed two separate civil actions challenging his criminal conviction and the legal system, both of which were dismissed. Federal Defs' Br. (Doc. No. 14) Exs. B and C. Gaudelli appealed one of these dismissals which was later affirmed by the Third Circuit. *Id.* at Ex. D. In sum, the matter Gaudelli seeks to litigate here was fully and necessarily determined in a prior proceeding and cannot be relitigated.

Accordingly, Eisner's motion to dismiss will be granted.

2) *Federal Defendants' Motion To Dismiss*

The Federal Defendants raise several arguments in support of their motion all of which have merit. We specifically mention two of those arguments.

First, the doctrine of collateral estoppel bars any claim the complaint purports to assert against the Federal Defendants. As previously noted, Gaudelli has raised the issue of the alleged forgery in four prior actions. The instant suit is nothing more than an improper collateral attack on the prior criminal conviction, veiled as a RICO conspiracy.

The complaint must also be dismissed for lack of jurisdiction. The complaint is essentially a thirty-two page rambling diatribe that focuses on Gaudelli's belief that all pro se cases in the federal courts are decided by law clerks and staff attorneys rather than Article III judges. The only relief sought against the Federal Defendants is in the nature of an advisory opinion, as he demands various judicial declarations such as a declaration that "he, as a pro se litigant, is entitled to the same consideration in adjudication of his actions as any lawyer from a `blue chip' law firm"; that "the practice of allowing law clerks and/or staff attorneys to do any research or draft any opinion or part thereof in either the district or appellate courts be declared-unconstitutional"; and that "the practice of ruling on appellate and other briefs that have not been read by the judges of deciding panel, much less considered carefully or the proper legal standards applied, be declared a felony . . . ." Compl. pp. 31. In sum, Gaudelli has presented no case or controversy involving the Federal Defendants.

3) *Enjoining the Filing of Additional Actions*

The Federal Defendants request that the court enjoin Gaudelli from filing any further claims that raise identical or similar issues to those that have been previously adjudicated, specifically regarding the alleged forgery of his signature, the fairness of his criminal conviction, and the handling of the criminal and related civil cases by the federal prosecutors, agents and judges.

Pursuant to the All Writs Act, 28 U.S.C. Section 1651, a district court may restrict a litigant from filing meritless cases, when a litigant's complaint raises claims identical or similar to those that have already been adjudicated. *See In re Oliver*, 682 F.2d 443, 445 (3d Cir. 1982). This is Gaudelli's attempted fifth bite at the apple in connection with the alleged forgery and his prior conviction. Given his proclivity for filing suit on this issue, we have little doubt that Gaudelli will continue to institute groundless litigation against the Federal Defendants related to the same. Thus, we find that a narrowly tailored injunction is warranted in this case.

Accordingly, the Federal Defendants' request for an injunction will be granted.

For the foregoing reasons, **IT IS HEREBY ORDERED** that Eisner's motion to dismiss (Doc. No. 4) and the Federal Defendants' motion to dismiss (Doc. No. 13) are **GRANTED. IT IS FURTHER ORDERED** that the complaint is **DISMISSED AS TO ALL DEFENDANTS WITH PREJUDICE.**

IT IS FURTHER ORDERED that plaintiff may not file in this court any actions against the Federal Defendants that raise identical or similar issue to those that have been previously adjudicated in this matter, specifically, actions regarding the alleged forgery of his signature, the fairness of his criminal conviction, and the handling of the criminal and related civil cases by the federal prosecutors, agents and judges, without first seeking permission from the court. In seeking permission of the court, the plaintiff must certify that the claims he wishes to present are new claims, which have never before been raised, or which never before could have been raised in previous federal or state actions. Upon failure to certify or upon a false certification, plaintiff may be found in contempt of court and may be punished accordingly.

The Clerk is directed to mark this case closed.

SO ORDERED this 30 day of March 2001.

/s/Robert J. Cindrich
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 00-0437

EDMOND N. GAUDELLI,
Plaintiff,

v.

MILTON EISNER, WILLIAM CROWLEY, JAMES Y. GARRETT, LINDA L. KELLY, D. BROOKS SMITH, KEITH ALAN M. PESTO, EDWARD R. BECKER, SAMUEL A. ALITO, JR., THOMAS L. AMBRO, MARYANNE TRUMP BARRY, MORTON I. GREENBERG, CAROL LOS MANSMANN, THEODORE A. MCKEE, RICHARD LOWELL NYGAARD, MARJORIE O. RENDELL, JANE R. ROTH, ANTHONY J. SCIRICA, DOLORES K. SLOVITER, RUGGERO J. ALDISERT, ROBERT E. COWEN, LEONARD I. GARTH, MAX ROSENN, WALTER K. STAPLETON, JOSEPH F. WEIS, JR., MARCIA WALDRON, and several unknown law clerks and staff attorneys,

Defendants.

RICO
18 U.S.C. § 1964(a)
PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF
28 U.S.C. § 1331, § 2201 and § 2202

STATEMENT OF THE CASE

Plaintiff Edmond N. Gaudelli is the victim of an obstruction of justice conspiracy initiated by accountant Milton Eisner, FBI Agent William Crowley, and Assistant United States Attorney James Y. Garrett. The three of them engineered the criminal conviction of the plaintiff based upon a forged document and perjured testimony.

The injury done to the plaintiff was further complicated by federal judges who, once the injury done to the plaintiff was addressed in several federal court proceedings, elected to engage in a "cover-up" and obstruction of justice conspiracy of their own, rather than grant the plaintiff the relief to which he was and is entitled.

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to:
2. 18 U.S.C. § 1964(a):

> (a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

3. 28 U.S.C. § 1331, the general federal question statute.
4. 28 U.S.C. §§ 2201 and 2202, the federal declaratory and injunctive relief statutes. Under the Declaratory Judgment Act, 28 U.S.C. § 2201, plaintiff may seek declaratory relief before even actual harm occurs if he has a reasonable apprehension of that harm occurring. As the Tenth Circuit Court of Appeals observed in *ANR Pipeline v.*

Corporation Commission of Oklahoma, 860 F.2d 1571, 1578 (10th Cir. 1988):

> Parties need not . . . await the imposition of penalties under an unconstitutional enactment in order to assert their constitutional claim for an injunction in federal court. Once the gun has been cocked and aimed and the finger is on the trigger, it is not necessary to wait until the bullet strikes to invoke the Declaratory Judgment Act.

5. 28 U.S.C. § 1367(a), the pendent jurisdiction statute.

6. That the plaintiff has a civil action that may, as part of his relief requested, give him judgment removing the offending federal judges and others from office is attested to by the remarks of the Honorable Wade H. Kitchens, Tuesday, June 22, 1937, attached hereto as Exhibit A.

PARTIES

7. Plaintiff Edmond N. Gaudelli was convicted in the United States District Court for the Western District of Pennsylvania, case no. 95-CR-67-2, and has a residential address of 2447 Hayson Avenue, Pittsburgh, Pennsylvania 15220.

8. Defendant Milton Eisner is an accountant with a business address of Jack Landis & Co., 500 Lawyers Building, 428 Forbes Avenue, Pittsburgh, Pennsylvania 15219-1668.

9. Defendant William Crowley is an FBI Agent with a business address of FBI Office, 700 Grant Street, 300 United States Post Office & Courthouse, Pittsburgh, Pennsylvania 15219.

10. Defendant James Y. Garrett is an Assistant United States Attorney for the Western District of Pennsylvania with a business address of United States Attorney's Office, 633 United States Post Office & Courthouse, Pittsburgh, Pennsylvania 15219.

11. Defendant Linda L. Kelly is the United States Attorney for the Western District of Pennsylvania with a

business address of United States Attorney's Office, 633 United States Post Office & Courthouse, Pittsburgh, Pennsylvania 15219.

12. Defendant the Honorable D. Brooks Smith is a federal District Judge of the Western District of Pennsylvania with a business address of Room 104, Penn Traffic Building, 319 Washington Street, Johnstown, Pennsylvania 15901.

13. Defendant the Honorable Keith Alan M. Pesto is a federal (part-time) Magistrate Judge of the Western District of Pennsylvania with a business address of Room 206, Penn Traffic Building, 319 Washington Street, Johnstown, Pennsylvania 15901.

14. Defendant the Honorable Edward R. Becker is the Chief Judge of the United States Court of Appeals for the Third Circuit with a business address of 19613 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106.

15. Defendant the Honorable Samuel A. Alito, Jr. is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 357 United States Post Office & Courthouse, Franklin and Walnut Streets, Newark, New Jersey 07101.

16. Defendant the Honorable Thomas L. Ambro is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of United States Courthouse, 844 King Street, Wilmington, Delaware 19801.

17. Defendant the Honorable Maryanne Trump Barry is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102.

18. Defendant the Honorable Morton I. Greenberg is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 7050 United States Courthouse, 402 East State Street, Trenton, New Jersey 08608.

19. Defendant the Honorable Carol Los Mansmann is a Circuit Judge of the United States Court of Appeals for the

Third Circuit with a business address 712 United States Post Office & Courthouse. 700 Grant Street, Pittsburgh, Pennsylvania 15219.

20. Defendant the Honorable Theodore A. McKee is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 20614 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106.

21. Defendant the Honorable Richard Lowell Nygaard is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 717 State Street, Suite 500, Erie, Pennsylvania 16501.

22. Defendant the Honorable Majorie O. Rendell is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 21613 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106.

23. Defendant the Honorable Jane R. Roth is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of United States Courthouse Lockbox 12, 844 King Street, Wilmington, Delaware 19801.

24. Defendant the Honorable Anthony J. Scirica is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 22614 United States Courthouse, Independence Mall West, Philadelphia, Pennsylvania 19106.

25. Defendant the Honorable Dolores K. Sloviter is a Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 18614 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106.

26. Defendant the Honorable Ruggero J. Aldisert is a Senior Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 120 Cremona Drive, Suite D, Santa Barbara, California 93117-5511.

27. Defendant the Honorable Robert E. Cowen is a Senior Circuit Judge of the United States Court of Appeals for the

Third Circuit with a business address of 7000 United States Courthouse, 402 East State Street, Trenton, New Jersey 08608.

28. Defendant the Honorable Leonard I. Garth is a Senior Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 5040 Martin Luther King, Jr. Federal Building & United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102.

29. Defendant the Honorable Max Rosenn is a Senior Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of 229 Max Rosenn United States Courthouse, 197 Main Street, Wilkes-Barre, Pennsylvania 18701.

30. Defendant the Honorable Walter K. Stapleton is a Senior Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address of United States Courthouse Lockbox 33, 844 King Street, Wilmington, Delaware 19801.

31. Defendant the Honorable Joseph F. Weis, Jr. is a Senior Circuit Judge of the United States Court of Appeals for the Third Circuit with a business address 513 United States Post Office & Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219.

32. Defendant Marcia Waldron is the Senior Staff Attorney of the United States Court of Appeals for the Third Circuit with a business address of 4416 United States Courthouse, William Green Building, 600 Arch Street, Philadelphia, Pennsylvania 19106.

33. Defendant law clerks and staff attorneys participating in the obstruction of justice conspiracy described herein are unknown to the plaintiff at the present time.

FACTS

34. Plaintiff Edmond N. Gaudelli was convicted based on a forged document in his criminal case, Government Exhibit 702, which was submitted to the Government by a government witness, defendant Milton Eisner. Defendant Eisner had previously been plaintiff's accountant and had

bungled plaintiff's books so badly that plaintiff sued him (and won) for his incompetence. Government Exhibit 702 was proven to be a forgery by three (3) handwriting experts. That document, attached hereto as Exhibit B, supposedly was signed by plaintiff Edmond N. Gaudelli.

35. Defendant FBI Agent William Crowley and defendant Assistant United States Attorney James Y. Garrett took this forged document from defendant Milton Eisner and used it to obtain an indictment and conviction against plaintiff.

36. Defendant Crowley also suborned perjury against plaintiff at trial from another government witness, Michael Tutro. In addition defendant FBI Agent William Crowley also planted evidence in plaintiff's files concerning plaintiff's "RamNeck" product. Defendant FBI Agent William Crowley was subsequently promoted to FBI spokesman after plaintiff was convicted.

37. Plaintiff's problems with the defendants are more fully described in case no. 95-CR-67-2 (Motion to Vacate Sentence filed under 28 U.S.C. § 2255) and case no. 98-CV-1185 (Federal Tort Claims filed under 28 U.S.C. § 2671 to § 2680) which plaintiff adopts and incorporates herein by reference.

38. Plaintiff had no idea of the magnitude of his problems with the federal legal system until he attempted to redress his grievances through the federal court system.

39. Plaintiff lost his criminal appeal, no. 96-3514, in the Third Circuit Court of Appeals, though the "manifest injustice" principle of law should have applied.

40. Plaintiff filed a petition pursuant to 28 U.S.C. § 2255 on January 28, 1999 to which the Government responded on February 23, 1999. Plaintiff responded to the Government's Answer on March 23, 1999. Defendant the Honorable D. Brooks Smith has failed to rule on this petition and has been "sitting" on it for over eleven months.[1] On January 27, 2000

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[1] Defendant the Honorable D. Brooks Smith appears to have a penchant for foot-dragging in his cases. See *Almanac of the Federal Judiciary*, Vol. 1, page 95-3rd Circuit (1999-1).

the case was assigned to defendant the Honorable Keith Alan M. Pesto for a report and recommendation. This assignment was not forthcoming until plaintiff filed a motion for judgment on the pleadings January 18, 2000.

41. Plaintiff filed a Federal Tort Claims Act complaint that was denied for reasons that can most charitably be described as dishonest and schizophrenic. That decision, which was "UNREPORTED—NOT PRECEDENTIAL," is attached hereto as Exhibit C. Compare page 2 of Exhibit C:

> On direct appeal, Gaudelli maintained that his signature on the document was a forgery. Analyzing the claim under the plain error standard, this Court concluded that the record was completely lacking of any proof that Government Exhibit 702 was not authentic.

with page 3 of Exhibit C:

> . . . Gaudelli became aware of Olson's failure to properly authenticate it the day Olson testified. (Footnote 1)
>
> Footnote 1: We agree with the District Court that Gaudelli's assertion that he did not know the document was a forgery until April 1997 is not credible. If the signature was not his own, he was aware of the fact once he viewed the document. We note that Appellee maintains in its brief that Gaudelli first became aware of the document in 1992. Appellee's Brief at 16.

42. This is simply nonsense. Plaintiff Gaudelli has a tenth-grade education and is in *no way* a handwriting expert, including analyzing his own.

43. That the defendant Third Circuit Court of Appeals judges are biased against criminal defendants is confirmed in the *Almanac of the Federal Judiciary*, Vol. 2, page 2-3rd Circuit (1999-1):

> "They have moved so far to the right in the last fifteen years . . . that it's a problem, especially for criminal defendants."

"They are conservative-to-moderate and that's antithetical to defendants."

"They have gone from being a rights-oriented court to a moderate court at best. This court is more conservative, and the Supreme Court has left them little room to show concern for people."

44. Defendant the Honorable Maryanne Trump Barry who was appointed October 25, 1999 is no different:

"She is pro-government."

"In criminal cases, she is biased in favor of the government."

"She is government-oriented, which is consistent with her background and former practice."

"She generally has pro-governmental leanings."

Id., Vol. 1, page 11-3rd Circuit.

45. Defendant the Honorable D. Brooks Smith is the same judge who, after declaring that the plaintiff could tell the difference between his own signature and a forgery, refuses to vacate plaintiff's conviction after having three (3) expert witnesses attest to that fact.

46. Plaintiff at the time was unaware of how an "independent" federal judiciary, unsupervised by their creators, the Congress, conducted itself.

47. What plaintiff Gaudelli discovered is that all pro se cases in the federal courts are decided by law clerks and staff attorneys rather than Article III judges. Worse, even when attorneys are involved, more than half the cases that reach the federal circuit courts of appeals are not *read* by Article III judges. See John Rustgard, *Dry Bones on the Bench—The Remedy for the Evil*, 88 Central Law Journal 341 (May 9, 1919) (Rustgard, formerly a United States District Attorney, 1st division of Alaska (1910-1914) became the Attorney General of the Territory of Alaska (1921-1933)), which is attached hereto as Exhibit D.

48. That this is a common practice even today is attested to by the Honorable Richard S. Arnold, Eighth Circuit Court of Appeals. See *Perfunctory justice: Overloaded federal judges increasingly are resorting to one-word rulings*, Des Moines Register (March 26, 1999), attached hereto as Exhibit E.

HOW THE FEDERAL COURTS BECAME INSTRUMENTS OF OPPRESSION

49. The constitutional provision concerning federal courts is quite clear:

> Article III. Section I. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

50. Notice the words "judicial Power of the United States" and "such inferior *Courts* as the Congress may from time to time ordain and establish."

51. Nowhere in Article III is the authority given for the judicial Power of the United States to be exercised by law clerks or staff attorneys.

> Horace Gray, as Chief Justice of the Massachusetts Supreme Judicial Court, seems to have been the first American judge to use law clerks. In the summer of 1875, Gray began his practice of procuring the services of a highly ranked new graduate of the Harvard Law School at his own expense. Each year a new clerk would arrive from the halls of Harvard, referred to the Chief Justice by his eminent half brother, Professor John Chipman Gray. When Horace Gray was appointed to the United States Supreme Court in 1882, he brought the use of law clerks to the nation's highest court.

> John Bilyeu Oakley and Robert S. Thompson, *Law Clerks in Judges' Eyes: Tradition and Innovation in the Use of Legal Staff by American Judges*, 67 California Law Review 1286, 1289 (1979) (footnotes omitted).

52. What Justice Gray did was sanctioned neither by an act of Congress nor by the original intent of the authors of Article III of the Constitution.

53. Congress ratified his actions "after the fact" in 1886 (assigning each Justice a personal assistant) and in 1919 (nine stenographic clerks and nine law clerks). *Id.* at page 1290 notes 14 and 17.

54. This practice then spread to the circuit courts of appeal in 1930 and to the federal district courts in 1936. *Id.* at page 1291.

55. The current provision for circuit judges is found in Title 28 U.S.C. § 712. *Id.* at page 1291 note 19. The text of § 712 is as follows:

> **28 U.S.C. § 712. Law clerks and secretaries**
> Circuit judges may appoint necessary law clerks and secretaries. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

56. That this practice has spread to the district courts is attested to by statute:

> **28 U.S.C. § 752. Law clerks and secretaries**
> District judges may appoint necessary law clerks and secretaries subject to any limitation on the aggregate salaries of such employees which may be imposed by law. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

57. These law clerks have been referred to as "fresh-faced but inefficient." *Id.* at page 1294.

58. The law concerning adjudication by anything other than an Article III judge is quite clear. See legal claims, infra.

59. The facts concerning adjudication by law clerks and staff attorneys are equally clear, though this fact remains well hidden from the general public and is undiscernible in any particular pro se litigation without access to depositions and interrogatories of the judges, staff attorneys and law clerks involved.

60. While this fact is almost never addressed in published opinions by judges themselves, the periodical literature is quite informative. A few examples:

> The notion that a law clerk only performs routine mechanical duties, or confines himself to preliminary functions such as digesting records, briefing cases, or other research, is another one that dies hard. In some courts he regularly prepares calendar or conference memoranda, and in others he prepares drafts of opinions; in some he participates with his judge in every phase of the judge's work: opinion writing, preparation of dissents, criticism of other judges' opinions, etc. It is apparent that his status and the scope of his duties is rapidly rising to a place similar to that which trained assistants hold in the legislative and executive field, and in private business.
>
> *Circuit Judges Seminars*, 63 F.R.D. 453, 548

> I may be a lonely minority with a voice crying out in the wilderness on this score, but I won't have my law clerks write draft opinions. I won't have them write for decision prior to oral argument. And I won't adopt anything that they write in a legal memorandum afterwards as *part* of my opinion. I don't *want* to encourage myself to be lazy, and I know enough of the seeds of laziness to be able to recognize them in myself; so I'm going to adhere to that until I am *forced by this overload to use them for opinion writing*. And *when I*

do, I'm going to put *their name on the opinion*, and say that it was written by my law clerk and say that I reviewed it and accepted it and so did my colleagues.

Thomas B. Marvell, *Appellate Courts and Lawyers: Information Gathering in the Adversary System*, 88 (Greenwood Press, Inc. 1978) (Judge Edwards of the Sixth Circuit) (footnote omitted).

From the interviews and from scattered references in the literature, it seems that federal circuit judges use clerks' drafts more often than state judges, probably because of the huge case loads and because they tend to have better clerks.

A cloud, it should be added, always hangs over published reports of the amount of delegation to clerks. Judges seem to be leery about admitting that much of their opinions are ghostwritten. Also, an interesting point discovered in the interviews, judges (and less often, clerks) often have little idea of how clerks are used in other offices at their court. Thus when a judge speaks for his court as a whole on this matter, as is the case in most of the preceding sources, he may not really know what he is speaking about.

Id. at page 314 note 7.

61. Ghostwriting is *forbidden* to lawyers. See *Johnson v. Bd. of County Com'rs County of Freemount*, 868 F.Supp. 1226, 1231-1232 (D. Colo. 1994). Why not judges?

Clerks writing about their jobs routinely emphasize that their judges make the final decision. See the writings listed in Bibliography C, and C. Wright, *The Overloaded Fifth Circuit: A Crisis in Judicial Administration*, 42 Texas L. Rev. 949, 961 (1964). In the Iowa Supreme Court study referred to in the preceding note both the clerks and judges considered the clerks' influence slight. Of course, the fact that the judges do not delegate the actual deciding does not

> mean the clerks are without influence, for judges to varying degrees accept the clerks' draft opinions and research findings without double-checking everything, and I suppose in some instances without understanding everything.
>
> Marvell, supra, at 315 note 12.

62. "[W]ithout understanding everything" is certainly obvious in this plaintiff's federal cases that are the objects of this action.

> Before turning to a circuit-by-circuit discussion of the central staffs, mention should be made of a concern arising from the creation of central staffs. That is the apprehension that a central staff will ultimately lead to a dilution or abdication of the judges' decision-making function—or at least an appearance of dilution or abdication. This concern stems from the belief that overburdened judges will tend to accept staff recommendations without exercising much independent judgment. This certainly has not been the experience in the Tenth Circuit. Nevertheless, the potential for such dilution or abdication is present and must be recognized. I believe, however, that if the judges and staffs are sensitive to this concern, it can be minimized, and that central staffs can make a substantial contribution to the ultimate goal of the federal court systems: equal justice under the law.
>
> Richard J. Banta
> Senior Staff Attorney
> United States Court of Appeals for the Tenth Circuit
>
> *Central Legal Staffs in the United States Courts of Appeals: A Survey of Internal Operating Procedures*, 5 (Federal Judicial Center April, 1978).

63. "[E]qual justice under the law" is simply not what pro se litigants are receiving in the Third Circuit appellate and district courts these days.

64. The term "society of losers" is what the federal courts think of pro se litigants. This was quoted in *The Misunderstood Pro Se Litigant: More Than a Pawn in the Game*, 41 Brooklyn Law Review 769, 770 (1975).

65. An article entitled *When Prisoners Sue: A Study of the Prisoners Section 1983 Suits in the Federal Courts* by William Bennett Turner; 92 Harvard Law Review 610 (1979) showed the results of the examination of five (5) federal districts and 664 cases filed by pro se litigants in those districts. The districts that were the subject of the study were District of Massachusetts (D. Mass.), the Eastern District of Virginia (E.D. Va.), the District of Vermont (D. Vt.), the Northern District of California (N.D. Cal.), and the Eastern District of California (E.D. Cal.).

66. The disdain of pro se litigants by court personnel and the manner in which pro se filings are handled were wholly confirmed. In all five districts, there was a "screening" process of all pro se cases by someone other than a judge.

67. "The indigent pro se prisoner who believes that he is sending his papers off to a judge for adjudication of the merits is probably misled." *Id.* at 619-620 (quoting *Federal Judicial Center, Report of the Study Group on the Case Load of the Supreme Court* 13 (1972)). What the prisoner really has access to is the fleeting attention of a judge (if the judge has nothing to do) or law clerk.

68. "In D. Mass., there were no local rules, prescribed forms, or written procedures governing the handling of prisoner cases at the time of this study. At the time, upon receipt of a prisoner's papers, the clerk's office sends them to a United States magistrate for ruling on the in forma pauperis application, and the magistrate's review is directed to whether the prisoner is in fact indigent. It is 'very improbable' that the court would thereafter take any *sua sponte* action." *Id.* at 620.

69. There was no screening on the *merits* and only added to the backlog of cases. "There [was] no way of identifying meritorious cases for prompt attention." *Id.* at 620 note 61.

70. Before 1977, in the Virginia district, the screening of in forma pauperis cases was performed by a magistrate, law clerk, or judge, depending on the judge's preference. In 1977, a "writ clerk" took over these functions. *Id.* at 620. The standards used by this clerk, directly out of law school and *without* guidance or training, were at the time not clear. Two weeks in the job, the writ clerk was of the opinion that "most" of the prisoner cases are frivolous and there is "much lying." *Id.* at 620 note 62 (from an interview with Joseph Vasapoli, writ clerk, E.D. Va. (June 14, 1977)).

71. In summing up his study, Professor Turner made this observation. "It is apparent that it is futile for prisoners to proceed pro se. Not only is it unlikely that their complaints will survive the ex parte section 1915(d) screening, but even assuming that the cases are not dismissed prior to service, they will languish on the courts' dockets. They are prime candidates for dismissal for failure to prosecute." *Id.* at page 625.

72. Later in his conclusion, Professor Turner remarked, "Pro se litigation deserves both the interest in efficient judicial administration and the need to do justice in individual cases, as the suits crowd the court's calendar and require court action but rarely are adjudicated on the merits. Since our study made no attempt to evaluate the merits of individual complaints and compare their disposition, it is not known whether justice was in fact done in individual cases." *Id.* at page 625.

73. This deceptive and dishonest delegation of judicial duties is worse than just misleading: it is a criminal fraud perpetrated by the federal courts against the 80% of the United States citizens and foreign nationals alike who cannot afford lawyers. Some of the quotes that are—apparently—designed to mislead the general public are given as examples:

> I have attempted from the foregoing sketchy treatment of the historical basis of judicial independence to show that the concept was a *sine qua non* to the men who drafted the United States Constitution. Because of the

> limitations of space and time, it was not possible for me to delve into the detail that would be appropriate and that would even more strongly support my thesis that judicial independence is the strongest safeguard against the exercise of tyrannical power by men who want to live above the law, rather than under it. The separation of powers concept as understood by the founding fathers assumed the existence of a judicial system free from outside influence of whatever kind and from whatever source, and further assumed that each individual judge would be free from coercion even from his own brethren.
>
> Sam J. Ervin, Jr., *Separation of Powers: Judicial Independence*, 35 Law and Contemporary Problems 120, 121 (Winter 1970).

74. That assumption would include "free from coercion" even from his own law clerks.

> Because of the unique position of the federal judiciary as the principal guardian of the rights conferred by the Constitution, encroachments upon its protected sphere must be weighed with acute sensitivity. The Framers of the Constitution went far beyond the British experience in its elevation of the judiciary to a co-equal branch of government. If we are to remain true to the Framers' plan for a government bound at all levels by the rule of law, we must resist even well-intentioned legislation that would chill the capacity of the judge to render impartial justice. Judicial independence is not a cliché conjured up by those who seek to prevent encroachments by the other branches of government. The term is one of art, defined to achieve the essential objective of the separation of powers that justice be rendered without fear or bias, and free of prejudice.
>
> Irving R. Kaufman, *The Essence of Judicial Independence*, 80 Columbia Law Review 671, 700-701 (1980).

75. It is ironic that the judiciary sees itself as the "guardian of the rights conferred by the Constitution." Pro se litigants primarily view the federal judiciary as government obstacles to keep them *from* the rights conferred by the Constitution, as plaintiff's current experience with the federal courts more than amply illustrates.

> Canon 1 of the Code of Judicial Conduct, "A Judge Should Uphold the Integrity and Independence of the Judiciary," contains the following:
>
> > An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.
>
> The Code stresses at the very outset the "independence of the judiciary." It would seem self-evident that, without judicial independence, there can be no principled decision-making. Judicial independence is the element which makes possible the deciding of important controversial issues on the basis of merit and principle rather than expediency.
>
> Honorable Edward D. Re, *Judicial Independence and Accountability: The Judicial Councils Reform and Judicial Conduct and Disability Act of 1980*, 8 Northern Kentucky Law Review 221, 222 (1981) (footnote omitted).

76. Which is exactly what the use of law clerks is, expedient.

77. In 1970 the Honorable Irving R. Kaufman of the Second Circuit Court of Appeals questioned whether the federal judiciary should be considered as "lions" or "jackals." See Kaufman, *Lions or Jackals: The Function of a Code of Judicial Ethics*, 35 Law and Contemporary Problems 3 (Winter 1970).

78. The defendant United States Attorney named in this action, Linda L Kelly, and her predecessors, have regularly turned a "blind eye" to the criminal acts complained of herein and appear to be in complicity with their own Assistant United States Attorneys, the defendant judges, staff attorneys, and law clerks committing them.

79. Unless the problems described herein are addressed with alacrity and handled with fairness, the future question may be "lions or scorpions" or "sloths or slugs."

LEGAL CLAIMS

80. No fraud is more odious than an attempt to subvert the administration of justice. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997 (1944).

> [T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.
>
> *Id.*

81. *Hazel-Atlas* was a case in which it was held that the submission of documents whose authorship had been deceptively attributed constitutes fraud upon the court.

82. The holding regarding non-Article III judges has been thoroughly addressed in the federal courts:

> Both parties cite to *Pacemaker Diagnostic Clinic of America v. Instromedix*, 725 F.2d 537 (9th Cir. 1984) U.S App. Prdg. In *Pacemaker*, the court, sitting en banc, reversed an earlier three-judge opinion (712 F.2d 1305 (9th Cir. 1983)), and held that the constitutional rights of parties in a federal forum to have their cause determined by an Article III judge is personal to the parties and may be waived. The court there observed:
>
> > In recent cases, the Supreme Court has not had to consider the constitutional implications of consent

> by the parties to go before a non-Article III judge, because in none did all parties consent to such a procedure. *See, e.g., Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982); *United States v. Raddatz*, 447 U.S. 667, 100 S.Ct. 2406, 65 L.Ed.2d 424 (1980); *Palmore v. United States*, 411 U.S. 389, 93 S.Ct. 1670, 36 L.Ed.2d 342 (1973); *Glidden Co. v. Zdanok*, 370 U.S. 530, 82 S.Ct. 1459, 8 L.Ed.2d 671 (1962). Significantly, in the Court's latest interpretation [*Northern Pipeline*] of Article III, all the Justices, although not forced to confront the issue squarely, indicated that consent is important to the constitutional analysis. . .
>
> The Supreme Court has allowed criminal defendants to waive even fundamental rights: the right to be free from self incrimination, *Garner v. United States*, 424 U.S. 648, 96 S.Ct. 1178, 47 L.Ed.2d 370 (1976), the right to counsel, *Adams v. United States ex rel. McCann*, 317 U.S. 269, 63 S.Ct. 236, 87 L.Ed. 268 (1942), the right to be free from unreasonable searches and seizures, *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973), the right to a speedy trial, *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), the right to a jury trial, *Duncan v. Louisiana*, 391 U.S. 145, 158, 88 S.Ct. 1444, 1452, 20 L.Ed.2d 491 (1968), and even, by pleading guilty, the right to trial itself. *See Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969). We refuse to reach the anomalous result of forbidding waiver in a civil case of the personal right to an Article III judge.

725 F.2d at 542-43.

The *Pacemaker* court concluded that, whereas a mandatory provision for trial by magistrates rather than Article III judges would violate the constitutional rights

> of parties in a federal forum to have their cause determined by an Article III judge, once a party freely and voluntarily consents to proceed to trial before a magistrate and waives his constitutional right to have his cause determined by an Article III judge, the party's consent overcomes any constitutional objections.
>
> *United States v. Dobey*, 751 F.2d 1140 (10th Cir. 1985).

83. Plaintiff Edmond N. Gaudelli consented to *nothing*, nor was the option of having his issues determined by a law clerk or a staff attorney ever made known to him by the Court.

84. The First Amendment, U.S. Constitution, guarantees the right "to petition the government for redress of grievances." *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 81 S.Ct. 523 (1961) and *California Motor Transport Co. v. Trucking Unlimited*, 92 S.Ct. 609 (1972) hold that the Petition Clause protects people's rights to make their wishes and interests known to government representatives in the legislature, judiciary, and executive branches. *Noerr Motor Freight, Inc.*, 81 S.Ct. at 530-531, *Trucking Unlimited*, 92 S.Ct. at 611-612. See also *McDonald v. Smith*, 105 S.Ct. 2787, 2789 (1985) (noting that James Madison in congressional debate on the petition clause made it clear that people have the right to communicate their will through direct petitions to the legislature and government officials).

85. [T]he basic concepts of equal protection apply to the federal Government through the due process clause of the Fifth Amendment. *United States v. Hawes*, 529 F.2d 472, 477 (5th Cir. 1976).

86. Equal protection of the law requires that persons similarly circumstanced be treated alike. *Reed v. Reed*, 404 U.S. 71, 76, 92 S.Ct. 251 (1971).

87. The right of access to the courts is a fundamental right protected by the Constitution. See *Chambers v. Baltimore and Ohio R.R. Co.*, 28 S.Ct. 34, 35 (1907). See also *Straub v. Monge*, 815 F.2d 1467, 1470 note 5 (11th Cir. 1987):

The court in *Jackson* recalled that

> in *Chambers v. Baltimore & Ohio Railroad Co.*, [footnote omitted] the Supreme Court recognized this right of access in the context of a diversity tort suit, founding the right on the privileges and immunities clause, and stating: 'The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship . . . granted and protected by the federal constitution.' [Footnote omitted.]
>
> *Jackson*, 789 F.2d at 311 (quoting *Chambers v. Baltimore & Ohio Railroad Co.*, 207 U.S. 142, 148, 28 S.Ct. 34, 35, 52 L.Ed. 143 (1907)).

88. Leaving pro se litigants to the inexperienced, unproven hands of defendant staff attorneys and defendant law clerks (many fresh out of law school and eager to please the large, powerful law firms they hope some day may hire them or federal district court judges before whom they may one day appear) rather than adjudication by Article III judges, is more than unconstitutional, it is a *felony*, 18 U.S.C. § 1503, obstruction of justice.

FRAUD UPON THE COURT

89. The behavior of the defendants named herein has been recognized as violative of federal criminal law since prior to World War II:

> The indictment names as defendants Manton, Spector, Fallon, Lotsch and Davis, and alleges that they, together with Archie M. Andrews, now deceased, Alfred F. Reilly and Almon B. Hall, and divers other persons to the grand jurors unknown, conspired to commit offenses against the United States, to wit: corruptly to endeavor to influence, obstruct and impede

> the due administration of justice in suits pending before certain courts of the United States; and to defraud the United States of and concerning its right to have the lawful functions of the judicial power of the United States exercised and administered free from unlawful impairment and obstruction, and more particularly its right to the conscientious, faithful, disinterested and unbiased judgment and action of the defendant Manton as the Senior Circuit Judge of the United States Circuit Court of Appeals for the Second Circuit free from corruption, partiality, improper influence, bias, dishonesty and fraud.
>
> *United States v. Manton*, 107 F.2d 834 (2nd Cir. 1938).

90. Fraud on the court . . . is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge *has not performed* his judicial function—thus where the impartial functions of the court have been directly corrupted. See *Robinson v. Audi Aktiengesellschaft*, 56 F.3d 1259, 1266 (10th Cir. 1995) (quoting *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), *cert. denied*, 116 S.Ct. 705 (1996)).

91. In *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (5th Cir. 1978), the court summarized the doctrine as follows:

> Generally speaking, only the most egregious misconduct, such as bribery of a judge[2] or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute a fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to

---

[2] "Men are more often bribed by their loyalties and ambitions than by money." *United States v. Wunderlich*, 72 S.Ct. 154, 157 (1951) (Justice Jackson, dissenting).

> the matter before it, will not ordinarily rise to the level of fraud on the court.
>
> *Id.* at 1338 (citations omitted) (footnote added).

92. See also 7 *Moore's Federal Practice* ¶ 60.33, at 60-360 (noting that fraud on the court should "embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication").

93. "Fraud on the court" is tightly construed because the consequences are severe. It may permit a party to overturn a judgment long after it has become final. Federal Rule of Civil Procedure 60(b) ("This rule does not limit the power of the court. . . to set aside a judgment for fraud upon the court."). Thus, it runs counter to the strong policy of judicial finality. See *Robinson*, supra, 56 F.3d at 1265-67. See *Moore's Federal Practice* ¶ 60.33, at 60-357, 358, 360-361 for examples of what constitutes fraud on the court.

94. All of which appear to apply to the way pro se appeals are handled in the Third Circuit Court of Appeals and how pro se cases are adjudicated in the courts below.

95. Fraud upon the court by the defendant Third Circuit judges is further compounded by "unreported" decisions, as the opinion in 99-3413, plaintiff Edmond N. Gaudelli's Federal Tort Claims Act complaint was labeled. This practice has been condemned by the watchdogs of our judicial system. See Groner, *Bill Pressed to Curb Unpublished Opinions*, Legal Times, December 23, 1991, page 1. Parts of that article bear repeating:

> "The main constraints on federal judges, beyond impeachment, derive from the fact that they must write reasoned opinions that are citable back to them," Minsker adds.
>
> Unpublished opinions by federal judges—a practice that began less than 20 years ago as an attempt to

> reduce the judges' workload—comprised 61 percent of the D.C. Circuit's decisions on the merits in the year that ended June 30, 1991. And the D.C. Circuit actually issues such opinions less frequently than do several other federal appeals courts.
>
> *Id.* at page 1
>
> Controversy about unpublished decisions ebbed and flowed throughout the 1970s and 1980s, with law-review articles and blue-ribbon panels generally condemning the practice.
>
> *Id.* at page 12
>
> ". . . when a decision isn't published and can't be cited, the court becomes free to make unprincipled and inconsistent decisions. Publicity is the most important constraint on the court."
>
> *Id.* at page 13 (quoting ACLU's Arthur Spitzer)

96. Those unprincipled and inconsistent decisions are rendered constantly in pro se cases in the Third Circuit.

97. I.e., has appeal of right become a mere "fig leaf" for unbridled exercise of trial court judges? See Dalton, *Taking the Right to Appeal (More or Less) Seriously*, 95 Yale Law Journal 62, 98 (1985).

98. No rule contemplates the abdication by the court of its decision-making responsibility.

99. An individual's right to an impartial and independent tribunal is subject to waiver like any other fundamental, personal right guaranteed by the Constitution. See *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 848-849 (1986).

100. Plaintiff Edmond N. Gaudelli engaged in no such waiver.

101. The fraud upon the court, denial of the equal protection of the laws and denial of meaningful access to the courts become self-evident simply by comparing the *facts* of

plaintiff Edmond N. Gaudelli's cases with the case law in the federal courts. Compare:

> The appeal also requires that we clarify the time at which a cause of action accrues for statute-of-limitations purposes under the civil RICO statute. We confirm that the "injury and pattern" discovery rule announced by this Court in *Keystone Ins. Co. v. Houghton*, 863 F.2d 1125 (3d Cir. 1988), remains the law of the Circuit, notwithstanding the Supreme Court's decision in *Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997), which rejected an exception we had grafted on to *Keystone's* general rule. We note, however, that the Supreme Court has granted writ of certiorari in *Rotella v. Wood*, 147 F.3d 438 (5th Cir. 1998), *cert. granted*, 119 S.Ct. 1139 (1999), and will likely decide this Term what rule will control in the future: the injury and pattern discovery rule employed by this court of appeals and others; the "pure injury discovery" rule employed by other courts of appeals; the "injury rule" endorsed by Justices Scalia and Thomas in *Klehr*, 521 U.S. at 198 (Scalia, J., concurring); or some other rule.
>
> *Annulli v. Panikkar*, No. 98-7449 (3d Cir. 12/30/1999).

to *Keystone*:

> The rule which we announce provides that the limitations period for a civil RICO claim runs from the date the plaintiff knew or should have known that the elements of a civil RICO cause of action existed, unless, as a part of the same pattern of racketeering activity, there is further injury to the plaintiff or further predicate acts occur which are part of the same pattern. In that case, the accrual period shall run from the time when the plaintiff *knew* or should have known of the *last injury* or the last predicate act which is part of the same pattern of racketeering activity. The last predicate act need not have resulted in injury to the plaintiff but must be part of the same "pattern."

Keystone Insurance Co. v. Houghton, 863 F.2d 1125 (3rd Cir. 1988).

102. This is the same principle under Pennsylvania law, which governs Federal Tort Claims Act complaints.

103. A fundamental principle of procedural due process is a hearing before an impartial tribunal. *Tunkovich v. Kansas Bd. of Regents*, 159 F.3d 504, 518 (10th Cir. 1998).

104. There is a presumed availability of federal equitable relief against threatened invasions of constitutional interests. *Hubbard v. EPA*, 809 F.2d 1, 11 (D.C. Cir. 1986) (citation omitted). [A] prospective violation of a constitutional right constitutes irreparable injury. *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987), *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998).

105. The situation in the Third Circuit today is not a new one. In the thirteenth century Bracton referred to those who decide causes according to their own pleasure. In the fourteenth century the English Court of Common Pleas decided it "didn't have time for the affairs of peasants." Apparently the equivalent of "peasants" in today's federal courtrooms are pro se litigants. In 1340 English judges had become so mired in and enamored of their own procedure that the English Parliament had to appoint Commissioners over the judges to straighten out the logjams in the courts. See Plucknett, *Concise History of the Common Law* (1956).

RICO

106. A RICO enterprise may include courts. *United States v. Bachelor*, 611 F.2d 443 (3rd Cir. 1979) and *United States v. Angelilli*, 660 F.2d 23 (2nd Cir. 1981).

THE ENTERPRISE

107. The RICO enterprise described herein consists of defendant Milton Eisner, defendant FBI Agent William Crowley, defendant Assistant United States Attorney James Y. Garrett, defendant the Honorable D. Brooks Smith, the defendant circuit judges of the Third Circuit Court of Appeals, defendant unknown law clerks and staff attorneys of

the Third Circuit Court of Appeals and others presently unknown to the plaintiff.

THE PATTERN OF RACKETEERING ACTIVITY

108. The pattern of racketeering activity appears to be comprised of thousands of predicate acts of obstruction of justice in violation of 18 U.S.C. § 1503, spanning a time frame of (at least) 1995 to the present day.

109. To establish a violation of 18 U.S.C. § 1962(a), the plaintiff must show: (1) the existence of an enterprise; (2) that the enterprise affected interstate commerce; (3) that the defendants were employed by or associated with the enterprise; (4) that the defendants participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that the defendants participated through a pattern of racketeering activity. See e.g., *United States v. Kotvas*, 941 F.2d 1141, 1143-44 (11th Cir.1991), *cert. denied*, 113 S.Ct. 982 (1993); *United States v. Young*, 906 F.2d 615, 618-19 (11th Cir.1990).

110. Section 1961(5) provides that a "'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after [October 15, 1970] and the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity." 18 U.S.C.A. § 1961(5)(West 1984). The statute provides a list of numerous state and federal offenses that can be charged as predicate acts of racketeering, including obstruction of justice. 18 U.S.C.A. § 1961(1)(A) and (D) (West Supp.1995).

42 U.S.C. § 1985(2)

111. The actions complained of herein are actionable under 42 U.S.C. § 1985(2).

112. Defendant federal judges *knew* of the felonious conduct of their defendant federal cohorts and did nothing to correct this criminal behavior.

113. Plaintiff is well aware that the defendant federal judges can make "case law" in order to play "cat in the sandbox" concerning their own misdeeds, as the Second

Circuit Court of Appeals did recently in *Tapia-Ortiz v. Winter*, 185 F.3d 8 (2nd Cir. 1999).

114. The published opinion in *Tapia-Ortiz* is simply another example of the dishonesty and oppression indulged in by the federal courts.

115. The deciding panel in *Tapia-Ortiz*, who were also defendants in that case, simply misquoted the legal principles espoused in *United States v. Will*, 449 U.S. 200 (1980) which addressed claims that applied to *all* Article III federal judges in the United States. *Other* federal circuit courts of appeals call in federal judges from *other* circuits to adjudicate an appeal involving.

116. What the dishonest decision in *Tapia-Ortiz* illustrates is the growing tendency of federal judges to create law to lighten their workload, evade their responsibilities, and deny American citizens (and others) any meaningful consideration of legitimate grievances.

RELIEF REQUESTED

1. That all Third Circuit appellate and district court judges be recused from adjudicating this action, pursuant to 18 U.S.C. § 144 and § 455.

2. That this Court declare that defendant federal judges have violated their contract of employment, pursuant to 28 U.S.C. § 2201.

3. That plaintiff be allowed *extensive* discovery pursuant to Federal Rules of Civil Procedure 26-37, in order to uncover and document the fraud in the judgments rendered against him and the pathological bias of defendants, the Honorable D. Brooks Smith, the Honorable Edward R. Becker, the Honorable Walter K. Stapleton, the Honorable Carol Los Mansmann, the Honorable Morton I. Greenberg, the Honorable Anthony J. Scirica, the Honorable Robert E. Cowen, the Honorable Richard Lowell Nygaard, the Honorable Samuel A. Alito, Jr., the Honorable Jane R. Roth, the Honorable Theodore A. McKee, the Honorable Majorie O. Rendell, the Honorable Dolores K. Sloviter, and the Honorable Joseph F. Weis, Jr.

4. That the judgment in case no. 98-CV-1185, *Gaudelli v. United States*, be declared void for fraud.

5. That, pursuant to 28 U.S.C. § 1331, § 2201, and § 2202, this court enter a declaratory judgment that plaintiff, as a pro se litigant, is entitled to the same consideration in adjudication of his actions as any lawyer from any "blue chip" law firm.

6. That the practice of allowing law clerks and/or staff attorneys to do any research or draft any opinion or part thereof in either the district or appellate courts be declared unconstitutional.

7. That the practice of ruling on appellate and other briefs that have not been *read* by the judges of the deciding panel, much less considered carefully or the proper legal standards applied, be declared a *felony*, pursuant to 18 U.S.C. § 1503, obstruction of justice.

8. That this Court convene a grand jury, pursuant to Federal Rule of Criminal Procedure 6(a), see *United States v. Christian*, 660 F.2d 892, 900 (3d Cir. 1981), to investigate the criminal depredations of the defendants named herein.

9. Compensatory damages in the amount of $3,000,000 from defendant Milton Eisner.

10. Punitive damages from defendant Milton Eisner to be determined by a jury.

11. Trial by jury on all issues triable by jury. See Seventh Amendment, U.S. Constitution, Federal Rule of Civil Procedure 38(a).

12. Such other relief as this court deems just, proper, and equitable.

Respectfully submitted,

Date: March , 2000

/s/ Edmond N. Gaudelli
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Pittsburgh, PA 15220
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Supreme Court, U.S
FILED
NOV 23 2001
OFFICE OF THE CLERK

(2)

No. 01-667

IN THE
SUPREME COURT OF THE UNITED STATES

EDMOND N. GAUDELLI,
Petitioner,
v.

MILTON EISNER, WILLIAM CROWLEY, JAMES Y. GARRETT, LINDA L. KELLY, D. BROOKS SMITH, KEITH ALAN M. PESTO, EDWARD R. BECKER, SAMUEL A. ALITO, JR., THOMAS L. AMBRO, MARYANNE TRUMP BARRY, MORTON I. GREENBERG, CAROL LOS MANSMANN, THEODORE A. McKEE, RICHARD LOWELL NYGAARD, MARJORIE O. RENDELL, JANE R. ROTH, ANTHONY J. SCIRICA, DOLORES K. SLOVITER, RUGGERO J. ALDISERT, ROBERT E. COWEN, LEONARD I. GARTH, MAX ROSENN, WALTER K. STAPLETON, JOSEPH F. WEIS, JR., MARCIA WALDRON, and several unknown law clerks and staff attorneys,
Respondents.

On Petition For A Writ of Certiorari to the United States Court of Appeals For the Third Circuit

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

AVRUM LEVICOFF, ESQUIRE
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QUESTIONS PRESENTED

1. Whether the issues raised in the Petition for a Writ of Certiorari present a case or controversy required for this Court to exercise jurisdiction.

2. Whether the United States Court of Appeals for the Third Circuit erred in holding that the Petitioner's Complaint was properly dismissed on the grounds that claims for damages arising out of Petitioner's criminal conviction may not be maintained while the conviction stands.

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OPINIONS AND ORDERS BELOW

United States District Court for the Western District of Pennsylvania, Memorandum Order (CV-00-0437) entered March 30, 2001 granting defendants' motion to dismiss the plaintiff's complaint.

United States Court of Appeals for the Third Circuit, Judgment (No. 01-1926) entered July 26, 2001 summarily affirming the judgment of the District Court.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. §1254 which provides: "cases in the courts of appeals may be reviewed by the Supreme Court . . . (1) by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

STATEMENT OF THE CASE

This case arises from *pro se* petitioner, Edmund N. Gaudelli's ("Gaudelli") March 1996 conviction in the United States District Court for the Western District of Pennsylvania for conspiracy to defraud the United States and for making false statements to a grand jury. As a result of his conviction, Gaudelli was sentenced to a period of incarceration.

Respondent, Milton Eisner ("Eisner"), who had been Gaudelli's personal accountant, was called to testify as a witness for the United States during Gaudelli's criminal trial in the Western District of Pennsylvania. During direct examination on behalf of the United States, Eisner testified that he was familiar with Gaudelli's signature given that he had seen it before on tax returns and other documents and that the signature on Government Exhibit 702 appeared to be Gaudelli's signature. Based upon Eisner's authentication of this document and upon motion by the United States,

Government Exhibit 702 was entered into evidence.

Following his criminal conviction, Gaudelli, proceeding *pro se*, appealed the conviction to the United States Court of Appeals for the Third Circuit, claiming that it was based upon the perjured testimony of Eisner and a forged document entered into evidence as Government Exhibit 702. The United States Court of Appeals for the Third Circuit affirmed Gaudelli's conviction, finding no merit to these claims. See United States v. Gaudelli, C.A. No. 96-3514 (3rd Cir. February 13, 1998). Gaudelli also sought to challenge his conviction by filing a Motion to Vacate Sentence pursuant to 28 U.S.C. Section 2255 (95-CR-67-2), and a claim under the Federal Tort Claims Act pursuant to 28 U.S.C. Sections 2671-2680 (98-CV-1185).[1]

Gaudelli subsequently filed the subject civil action in the United States District Court for the Western District of Pennsylvania on March 3, 2000. Pet. App. 8a. This complaint raised claims against Eisner based on his in court testimony and his role in authenticating Government Exhibit 702. Gaudelli seeks compensatory damages in the amount of $3,000,000 as well as punitive damages from Eisner. Pet. App. 37a.

Gaudelli's complaint also raised claims against the defendants, William Crowley, an FBI agent involved in his criminal prosecution; James Y. Garrett, the assistant United States attorney who prosecuted him; Linda L. Kelly, also an assistant United States attorney; D. Brooks Smith, United States District Judge for the Western District of Pennsylvania;

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[1] Gaudelli's §2255 motion was denied by the United States District Court for the Western District of Pennsylvania. Gaudelli filed an application to the Third Circuit for a certificate of appealability to appeal the denial of his §2255 motion (C.A. No. 00-3429). Gaudelli's claims under the Federal Tort Claims Act were dismissed by the United States District Court for the Western District of Pennsylvania on May 6, 1999. The United States Court of Appeals for the Third Circuit affirmed the Order of the District Court on February 7, 2000. (C.A. No. 99-3413).

Keith A. Pesto, United States Magistrate Judge for the Western District of Pennsylvania; all judges, newly appointed, current and senior, of the United States Court of Appeals for the Third Circuit; Marcia Waldron, a Third Circuit Senior Staff Attorney; and "several unknown law clerks and staff attorneys," (hereinafter referred to as the "Federal Defendants"). The complaint alleges that Eisner and the Federal Defendants participated in a conspiracy to commit "fraud upon the Court," and violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. Section 1962. Gaudelli alleges that Eisner, FBI Agent Crowley and Assistant United States Attorney Garrett conspired to engineer his criminal conviction through the use of perjured testimony. Pet. App. 9a. Gaudelli also alleges in the complaint that the federal judges named as defendants engaged in a "cover up" and obstruction of justice conspiracy. Pet. App. 9a.

Thereafter, on April 4, 2000, Eisner filed a motion to dismiss Gaudelli's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Federal Defendants likewise filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). By Memorandum Order entered on March 30, 2001, the United States District Court for the Western District of Pennsylvania granted the defendants' motions to dismiss. Pet. App. 3a. With regard to Gaudelli's claims against Eisner, the District Court found that these claims were barred by the doctrine of collateral estoppel given that Gaudelli's contention that Government Exhibit 702 was a forgery and that Eisner testified falsely as to its authenticity was decided by the Third Circuit as part of Gaudelli's direct appeal of his conviction. Pet. App. 5a. The District Court reasoned that given that these issues were litigated and determined in a prior proceeding, Gaudelli could not raise them in a subsequent civil action. Pet. App. 5a. The District Court also noted that Gaudelli's civil suit was nothing more than an improper collateral attack on his criminal conviction. Pet. App. 6a. The District Court further

held that Gaudelli's complaint must be dismissed for lack of jurisdiction on the grounds that the only relief sought by Gaudelli against the Federal Defendants is in the nature of an advisory opinion.[2] Pet. App. 6a. The District Court granted the Federal Defendants' request for an injunction for the purpose of enjoining Gaudelli from filing any further claims which raised identical or similar issues against the Federal Defendants without prior permission of the District Court. Pet. App. 7a.

Gaudelli filed a timely appeal of the Order dismissing his complaint to the United States Court of Appeals for the Third Circuit. The Federal Defendants filed a Motion for Summary Affirmance of the District Court's Order. The Third Circuit summarily affirmed the Order of the District Court by *per curiam* Opinion entered July 26, 2001. Pet. App. 2a. The Third Circuit found that the District Court had properly dismissed Gaudelli's complaint on the grounds that under this Court's holding in Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994), Gaudelli's claims for damages arising out of his criminal conviction may not be brought while his conviction stands. The Third Circuit also found that to the extent Gaudelli's complaint seeks relief other than damages, such a collateral attack may only be addressed in a Section 2255 motion. Moreover, the Third Circuit found that Gaudelli's claims against the Federal Defendants were properly dismissed for lack of jurisdiction in that the only relief requested with regard to these defendants was in the form of an advisory opinion which is prohibited under Article

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[2] Gaudelli's complaint sought a declaration that "he, as a *pro se* litigant, is entitled to the same consideration in adjudication of his actions as any lawyer from a 'blue chip' law firm;" and that "the practice of allowing law clerks and/or staff attorneys to do any research or draft any opinion or part thereof in either the district or appellate courts be declared unconstitutional;" and that "the practice of ruling on appellate and other briefs that have not been read by the judges of deciding panel, much less considered carefully or the proper legal standards applied, be declared a felony . . ." Pet. App. 37(a)

III, Section II of the Constitution of the United States.[3]

Gaudelli subsequently filed the subject Petition for a Writ of Certiorari on October 22, 2001. Gaudelli presents the following questions for consideration by this Court:

I. May law clerks engage in the judicial function unknown to the litigant?

II. Do *pro se* litigants have the same right of meaningful access to the courts as do lawyers from "blue chip" law firms?

III. Is there in fact a remedy for every right denied?

Clearly, the issues presented by the Petition establish that Gaudelli seeks only an advisory opinion and is not challenging the District Court's dismissal of his claims against Eisner. For this reason, and for the reasons more fully set forth below, this Court should deny the Petition for a Writ of Certiorari.

STANDARD OF REVIEW

An Order dismissing a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure is reviewed de novo. Help at Home, Inc. v. Medical Capital, L.L.C., 260 F.3d 748 (3rd Cir. 2000). The Court must accept as true and draw all reasonable inferences in favor of the plaintiff. Id. The dismissal must be affirmed where it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. Id., *citing*, Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99 (1957).

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[3] The Third Circuit upheld the District Court's Order enjoining Gaudelli from relitigating the same claims against the Federal Defendants.

ARGUMENT

A. The Petition Seeks an Advisory Opinion and Fails to Present a Compelling Reason for Review

This Court's review is not justified because as the Petition merely requests an advisory opinion from this Court. Gaudelli's Petition establishes that he is seeking a declaration from this Court that "law clerks may not engage in usurping the duties of Article III Judges who have been confirmed by Congress to perform those duties" and that "*pro se* litigants should have the same right of meaningful access to the courts as to lawyers from 'blue chip' law firms." However, it is well settled that this Court may not enter advisory opinions pursuant to Article III, Section II of the Constitution of the United States. Pursuant to this provision, the jurisdiction of this Court is limited to actual "cases" and "controversies." This constitutional provision operates as a direct prohibition on the issuance of advisory opinions by the federal courts. See Rhone-Poulenc Surfactants and Specialties, L.P. v. C.I.R., 249 F.3d 175, 181-182 (3rd Cir. 2001). In order for an action to satisfy this case or controversy requirement, it must present "(1) a legal controversy that is real and not hypothetical, (2) a legal controversy that affects an individual in a concrete manner so as to provide the factual predicate for reasoned adjudication, and (3) a legal controversy so as to sharpen the issues for judicial resolution." Id., *quoting*, Travelers Ins. Co. v. Obusek, 72 F.3d 1148 (3rd Cir. 1995), *quoting*, Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 411 (3rd Cir. 1992)

The issues presented in Gaudelli's Petition do not present a legal controversy which would satisfy the jurisdictional requirements of Article III, Section II of the Constitution of the United States. Rather, Gaudelli's Petition as well as the complaint filed in the United States District Court for the Western District of Pennsylvania represent

Gaudelli's disagreement with the federal courts' practice of having law clerks and staff attorneys rather than Article III judges decide cases. In particular, Gaudelli challenges this practice as it relates to *pro se* litigants as it allegedly deprives these litigants of meaningful access to the courts. Given that Gaudelli's Petition requests this Court to examine the role of law clerks and staff attorneys in the federal judiciary and not the claims raised against Eisner, his Petition fails to present a legal controversy which would satisfy this Court's jurisdictional requirements.

Moreover, Gaudelli's Petition for a Writ of Certiorari presents no significant issue justifying review of the judgment of the Third Circuit Court of Appeals by this Court. It is well settled that upon petition for a writ of certiorari, this Court's review is a matter of judicial discretion, not of right. Supreme Court Rule 10. Moreover, this Court will grant review only for "compelling reasons." Id. The reasons this Court may find compelling include, but are not limited to, a conflict of decisions between the United States courts of appeals; a conflicting decision between a United States court of appeals and a state court of last resort; a decision by a state court of last resort which conflicts with that of another state court of last resort or a United States court of appeals; or a decision by a state court or a United States court of appeals on an important question of federal law that has not been settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions of this court. Supreme Court Rule 10(a)-(c). Moreover, a petition for a writ of certiorari will rarely be granted based on a petitioner's contention that the lower court erred in its findings of fact or application of the law. Id.

Clearly, in this case, Gaudelli has failed to present a compelling reason justifying this Court's review of the dismissal of his complaint. In fact, Gaudelli's Petition fails to even challenge the legal conclusions of the courts below.

Rather, Gaudelli presents to this Court questions regarding the constitutionality of judicial law clerks' role in researching and drafting opinions of the court, and whether *pro se* litigants under this system have meaningful access to the courts.

B. Gaudelli's Claims Against Eisner For Damages May Not Be Maintained Given That His Conviction Has Been Upheld

Apart from the lack of a legal controversy in the Petition, Gaudelli's claims against Eisner are foreclosed by virtue of his criminal conviction. The question presented in Gaudelli's criminal conviction in the District Court for the Western District of Pennsylvania was upheld on direct appeal to the United States Court of Appeals for the Third Circuit. Moreover, Gaudelli's attempts to challenge his conviction pursuant to Section 2255 have also been unsuccessful. As noted by both the District Court and the Third Circuit, Gaudelli's claims against Eisner stem solely from Eisner's role as a witness against Gaudelli on behalf of the United States, and in particular, Eisner's testimony regarding the allegedly forged document admitted as Government Exhibit 702 which Gaudelli contends was the basis for his criminal conviction.

This Court's decision in Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994), provides considerable guidance in the case at bar. In Heck, this Court was presented with the question of whether a petitioner could challenge the constitutionality of his conviction in a suit for damages brought pursuant to 42 U.S.C. Section 1983. In that case, the petitioner filed suit claiming that the respondents, the prosecutors and an investigator with the state police, had engaged in unlawful acts that had led to his arrest and conviction. 512 U.S. at 479. The Heck Court found that petitioner's claims essentially represented a challenge to the legality of his conviction. This Court reasoned that

petitioner's claims were most analogous to the common law cause of action for malicious prosecution, and that in order to successfully maintain a claim for malicious prosecution, the plaintiff must establish that the criminal proceeding terminated in favor of the accused. Id. at 484. The Court in Heck reasoned that the policy underlying this requirement in a malicious prosecution claim should apply with equal force and effect to a claim for monetary damages arising out of plaintiff's criminal conviction and brought pursuant to Section 1983, and thus, the plaintiff must establish the unlawfulness of his conviction or confinement before a claim for monetary damages may be maintained. Id. at 484-485. Accordingly, the Court held that:

> in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

Id. at 487. Thus, when faced with a situation where the plaintiff seeks monetary damages in relation to a criminal conviction, the Court must determine whether a judgment in favor of the plaintiff would necessarily imply the invalidity of the conviction. If it would, according to the Court in Heck, the complaint must be dismissed absent a showing by the plaintiff that the conviction has been invalidated. Id.

Applying these principles to the instant case, it is clear that Gaudelli's claim against Eisner and the Federal

Defendants is essentially that these defendants conspired to bring about his criminal conviction through the use of an allegedly forged document and Eisner's allegedly false testimony. Gaudelli seeks monetary damages from Eisner based on his role in bringing about his criminal conviction. However, under this Court's decision in Heck, Gaudelli may not maintain his claim for monetary damages against Eisner in the absence of a showing that his criminal conviction has been overturned. In this case, despite Gaudelli's numerous attempts to have his conviction overturned on the basis of this allegedly forged document, these attempts have been unsuccessful and his conviction stands. As stated above, Gaudelli's conviction was upheld on direct appeal by the Third Circuit and his Section 2255 motion has been denied. Accordingly, Gaudelli may not maintain his civil claims for monetary damages against Eisner. Therefore, the decision of the Third Circuit Court of Appeals upholding the dismissal of Gaudelli's claims against Eisner was proper.

C. Gaudelli's Claims Are Barred by the Doctrine of Collateral Estoppel

Moreover, the dismissal of Gaudelli's claims against Eisner was also proper under the doctrine of collateral estoppel. It is well settled that when a party has had a full opportunity to litigate an issue and that issue has been determined against that party, the doctrine of collateral estoppel bars relitigation of this fact or issue. See Ash v. Swensen, 397 U.S. 436 (1970). Collateral estoppel applies where the following four elements exist:

> (1) An issue decided in a prior action is identical to one presented in a later action; (2) The prior action resulted in a final judgment on the merits; (3) The party against whom collateral estoppel is asserted was a party to the prior action,...; and (4) The party against whom collateral estoppel is asserted

> had a full and fair opportunity to litigate the issue in the prior action.

Jones v. United Parcel Service, 214 F.3d 402, 405 (3rd Cir. 2000) *citing* Rue v. K-Mart Corp., 713 A.2d 82, 84 (Pa. 1998)).

The gravamen of the plaintiff's claim against Eisner is that the signature on Government Exhibit 702 entered into evidence against him in the criminal trial was a forgery, and that Eisner falsely testified as to the document's authenticity during trial. This precise issue was addressed in several decisions involving Gaudelli's criminal conviction. First, and most important, the issue of whether Government Exhibit 702 was authentic was decided by the Court during Gaudelli's criminal trial. At his trial, Gaudelli had adequate opportunity to challenge its authenticity. Likewise, Gaudelli had every opportunity through cross-examination to challenge the veracity of Eisner's testimony at the trial. Further, the criminal trial resulted in a final judgment on the merits.

Moreover, as noted by the District Court, the Third Circuit directly addressed this issue when Gaudelli challenged his criminal conviction on the grounds that his conviction was based on the alleged perjured testimony of Eisner and a forged document. See United States v. Gaudelli, C.A. No. 96-3514. In affirming Gaudelli's criminal conviction, the Court of Appeals stated ". . . the record before us is completely lacking of any proof that Eisner's testimony was false or that Government Exhibit 702 was not authentic." (footnote omitted) Id. at 3.

As Gaudelli had a full and fair opportunity to litigate the authenticity of his signature on Government Exhibit 702 as well as Eisner's credibility as a witness at the criminal trial, the claims raised by Gaudelli against Eisner in the subject civil action are barred by the doctrine of collateral estoppel. As such, the judgment of the Third Circuit upholding the dismissal of Gaudelli's claims against Eisner was proper.

D. Gaudelli Fails To State a Claim Against Eisner Upon Which Relief Could Be Granted

Finally, wholly apart from the effect of collateral estoppel, Gaudelli's complaint was properly dismissed as it fails to state a claim against Eisner upon which relief may be granted. Gaudelli's claims against Eisner are based purely on his role as a witness called by the government to testify at Gaudelli's criminal trial. However, given that these claims are predicated on Eisner's in-court testimony at the criminal trial, any claims against Eisner are barred by the witness immunity doctrine. See Briscoe v. Lattue, 460 U.S. 325, 103 S.Ct. 1108 (1983). Gaudelli does not allege any other improper, unlawful or otherwise actionable conduct on the part of Eisner. Therefore, as Eisner is immune from liability as to the only allegedly wrongful conduct alleged in Gaudelli's complaint there is no claim against Eisner upon which relief could be granted. Accordingly, the decision of the Third Circuit affirming the dismissal of Gaudelli's complaint was proper.

CONCLUSION

For the reasons set forth above, Respondent, Milton Eisner, requests this Court to deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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